

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, OCTOBER 20, 2009**

**7 P.M. COUNCIL MEETING**

**CALL TO ORDER** - Mayor Spitaleri called the Council Meeting to order in the Council Chambers.

**SALUTE TO THE FLAG**

**ROLL CALL**

**PRESENT:**

Mayor Anthony Spitaleri  
Vice Mayor Christopher Moylan  
Councilmember John Howe  
Councilmember Melinda Hamilton  
Councilmember David Whittum  
Councilmember Dean Chu

**ABSENT:**

Councilmember Ron Swegles

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Director of Community Development Hanson Hom  
Director of Public Works Marvin Rose  
Director of Finance Mary Bradley  
Planning Officer Trudi Ryan  
Deputy Chief of Police Mark Stivers  
Assistant City Attorney Rebecca Moon  
City Clerk Kathleen Franco Simmons

Mayor Spitaleri announced Councilmember Swegles absence is excused.

**PUBLIC ANNOUNCEMENTS**

Tim Taekwang Kim announced an upcoming opening of Sunnyvale Art Gallery.

**CONSENT CALENDAR**

Tap Merrick pulled Item 1.E.

Councilmember Hamilton removed Item 1.G.

MOTION: Vice Mayor Moylan moved and Councilmember Howe seconded to approve the Consent Calendar, with the exception of Items 1.E. and 1.G.

Councilmember Whittum stated his vote on the motion will not include Item 1.H., as he lives within 500 feet of the Mathilda Bridge.

VOTE: 6-0 (Councilmember Swegles absent)

**1.A. Approval of Council Meeting Minutes of September 29, 2009**

**1.B. Approval of Council Meeting Minutes of October 6, 2009**

**1.C. Approval of Information/Action Items – Council Directions to Staff**

**Fiscal Items**

**1.D. RTC 09-265 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 474 & 475**

Staff Recommendation: Review the attached lists of bills.

**1.E. RTC 09-264 City of Sunnyvale Investment Report – 3<sup>rd</sup> Quarter 2009**

Tap Merrick stated he pulled this item in order to request that residences financed by the City be included as assets. Merrick stated he understands the sensitive nature of this information, but it is important information, even if it is listed as a lump sum, because this income is part of the City's income and assets.

Councilmember Whittum verified with Merrick that he is requesting the mortgages held by the City for City employees are listed in the investment report.

Director of Finance Mary Bradley responded that mortgages are not considered an eligible investment; rather they are an employee relations mechanism. Director Bradley explained they could be listed elsewhere, but they are not appropriate to be included in the investment report.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve staff recommendation to receive and file the investment report.

VOTE: 6-0 (Councilmember Swegles absent)

**1.F. RTC 09-267 Approval of Budget Modification No. 12 to Appropriate the \$15,000 Severns Family Foundation Grant for CPR Training in High Schools**

Staff Recommendation: Alternative 1: Approve Budget Modification No. 12 to appropriate Severns Family Foundation Grant monies to teach CPR in the high schools.

**1.G. RTC 09-268 Reject Proposal Received in Response to Request for Proposals F0805-71 to Provide Continuing Technical Support for Maximo Computer Maintenance Management System Version 4.1.1**

Councilmember Hamilton inquired whether there is a technical staff person supplying support for this item currently and if that service will continue. Director of Public Works Marvin Rose verified that the City currently has technical service; however, staff has brought this item forward in order to look at reissuing the proposal because only one bid was returned. Councilmember Hamilton verified with Director Bradley that the proposal received was not from the current provider.

Mayor Spitaleri opened public comments.

No speakers.

Mayor Spitaleri closed public comments.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve rejection of the proposal received in response to RFP F0805-71.

VOTE: 6-0 (Councilmember Swegles absent)

**Contracts: SunnyvaleWorks!**

**1.H. RTC 09-269 Modify an Existing Contract for Design and Construction Support Services for the Mathilda Avenue Overhead Bridge Rehabilitation Project (F0910-34)**

Staff Recommendation: Modify the existing contract with Mark Thomas and Co. and increase the total not-to-exceed amount by \$161,445, from \$2,511,825 to \$2,673,270.

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

Mayor Spitaleri requested an update on the mall. City Manager Gary Luebbers responded that a walk-through occurred and a list of improvements and repairs to the infrastructure of the building has been drawn up along with a plan for financing. City Manager Luebbers stated he will be meeting very soon to discuss marketing the project within the development community.

Mayor Spitaleri verified with City Manager Luebbers that McKinley Avenue will be open from Mathilda to Sunnyvale Avenue beginning November 10, 2009. City Manager Luebbers stated staff keeps the City's Web site updated regularly regarding this project.

Councilmember Hamilton requested Council receive an update as to where the historical artifacts from this project are being stored.

**PUBLIC COMMENTS**

Tap Merrick passed out a response to City Attorney David Kahn's comments made during the last City Council meeting. Merrick stated his intent is to hold Sunnyvale City departments responsible for thoroughly reviewing studies such as Hexagon's traffic study; insisting on necessary corrections,

and demanding completion of projects for the term of bid award. Merrick stated he would call upon Council to insist on proper policing of City departments. Merrick stated if the City Charter does not call for such policing activity on Council's part, then he would request it be added to the Charter. Merrick stated he believes the City Attorney did not tell the whole truth and instead told his truth to protect the City and staff.

Merrick explained that the document he passed out to Council identifies items that he agrees with the City Attorney on and those he does not.

Merrick stated he properly requested the bidding documents; however, they were not provided to him by the Department of Public Works. Merrick stated the City should have provided him with more information under the Freedom of Information Act.

## **PUBLIC HEARING/GENERAL BUSINESS**

### **2. RTC 09-261 2009-0691 Revocation of Use Permit #5714 Allowing Live Entertainment and General Sale of Alcoholic Beverages at 146 S. Murphy Avenue**

Mayor Spitaleri stated he will act as the Presiding Officer over this Use Permit Revocation Hearing with the City Council acting as the decision makers. Mayor Spitaleri turned the presentation over to City Attorney David Kahn who explained how the hearing process will proceed and stated that each party has the right to offer relevant testimony and documentary evidence bearing on the issue before the Council. Each party has the right to be represented by Council and to cross examine witnesses. The hearing will proceed with the Community Development Department presenting first. The Community Development Department has the burden of proof and must show by a preponderance of evidence that the Abyss is operating in violation of the terms of its Use Permit and that such violations are serious and warrant revocation or modification of the permit. At the conclusion of the Community Development Department's presentation, the Abyss will have an opportunity for cross examination of any of the witnesses called or relied upon by the Community Development Department. At the conclusion of any cross examination by the Abyss, the Abyss will have an opportunity to present testimony and evidence in opposition to the request for revocation of the Use Permit and contest any evidence presented by the Community Development Department. Upon conclusion of the presentation by the Abyss, the Community Development Department may cross examine any of the witnesses called or relied upon by the Abyss. After both sides have completed their presentations, the proceeding may be opened for public comments and both parties will have an opportunity to respond to any public comments and the right to closing arguments, not to exceed five minutes each. Council will make findings at the end.

Director of Community Development Hanson Hom presented the history of the Abyss establishment and presented the City's case for revocation of their Use Permit.

Department of Alcoholic Beverage Control (ABC) District Administrator Karen Nielsen made a presentation regarding the ABC process with regard to the Abyss. Nielsen explained that the Abyss holds a Type 47 On-Sale General Alcohol License, which requires more food sales than alcohol sales. This type of license does allow those under 18 to be on the premises. Nielsen stated that ABC has received several accusations against this property. Nielsen explained in detail the ABC's use of progressive discipline in order to bring the Abyss establishment into compliance. Since that time, ABC has proceeded with revocation proceedings, which have been adopted by the director; however, the revocation is currently on appeal. While on appeal,

the Abyss is still allowed to operate.

Vice Mayor Moylan verified with Nielsen that the appeal process is usually a year beyond the administrative hearing and could be longer if appealed to the Supreme Court. On average, an appeal process is approximately one to two years.

Councilmember Howe verified with Nielsen that ABC performed independent investigations to arrive at their findings. Councilmember Howe and Nielsen discussed the ABC investigation findings with regard to the two accusations that were filed.

Councilmember Howe verified with Nielsen that out of the approximate 80,000 liquor licenses within California, less than two percent per year are recommended to be revoked by the ABC.

Deputy Chief of Police Mark Stivers offered the history of Public Safety's interaction at the Abyss since 2006 and summarized the number and type of incidents that officers have responded to at this establishment.

Director Hom explained that Abyss is a tenant of the owners of the property.

Councilmember Howe inquired as to what would be allowed on the property if the Use Permit was removed and at what point would the permit be removed. Director Hom stated all uses would need to cease immediately if the Use Permit was revoked this evening. Councilmember Howe verified a restaurant could be opened at the site, but alcoholic beverages would not be allowed.

Mayor Spitaleri verified with Director Hom that the local rules could be instituted immediately; thereby, stopping alcohol sales prior to the ABC appeal process being completed. Nielsen verified that if the local jurisdiction pulled the Use Permit for this facility, then the Abyss could continue their appeal process, but in the meantime would need to surrender their liquor license to the ABC.

Vice Mayor Moylan clarified that in order to run that type of business, permits are required from two agencies, ABC and the City, and that the decision this evening is on the City permit only.

Mayor Spitaleri offered cross examination to the attorney for the Abyss Entertainment Group, Anthony Pagkas. Pagkas offered a written brief and passed out copies to Council.

Attorney Pagkas cross examined Nielsen.

Pagkas requested to cross examine Robert Wieworka, Chief Prosecuting Counsel, Department of Alcoholic Beverage Control. Assistant City Attorney Rebecca Moon stated the City did not offer Mr. Wieworka as a witness; therefore, he cannot be cross examined.

Pagkas cross examined Director Hom.

Mayor Spitaleri announced the Pagkas may now introduce testimony and evidence to rebut evidence brought forward by the Community Development Department.

Pagkas stated he would like to offer arguments; however, does not have any evidence to provide.

City Attorney Kahn requested the Mayor call a brief recess to allow both sides an opportunity to review and respond to the brief submitted in opposition.

Councilmember Whittum requested a brief recess to review the brief.

Mayor Spitaleri called a recess at 8:11 p.m.

Mayor Spitaleri reconvened the Council meeting at 8:25 p.m.

Councilmember Hamilton discussed with Pagkas the surrounding businesses who have sustained broken windows from incidents and how their damaged property has been repaired. Pagkas stated there is not any credible evidence submitted in regard to any broken windows. Emanuel Nguyen from the Abyss stated she took responsibility and fixed three windows.

Councilmember Howe verified with Nguyen that she has paid for three broken windows of the surrounding businesses and she agreed to pay for these windows because her security personnel verified that customers of the Abyss were responsible for the broken windows.

Councilmember Chu verified that Nguyen currently lives in San Jose and she is operating the business for her parents who live in New Jersey and that she took over the business a few months after opening.

Robert Anderson, Attorney for property owners, the Sun Family, stated the owners share the City's concerns and are requesting that a less drastic action be taken to resolve the issues. Anderson offered support for maintaining the Use Permit and the inability to lease out the facility to others. Anderson stated the issue is not the nature of the Use Permit but instead that the current tenant has not lived up to the conditions of the Use Permit. Anderson stated the property owners are requesting that Council allow them enough time to find a suitable replacement tenant.

Vice Mayor Moylan asked Anderson what the owner has done to work with the current tenant in making sure they comply with the City codes. Jane Sun, property owner, explained that she learned of the problems about a month ago. Sun explained she attempted to correct these issues by meeting with City staff and stated if she had known earlier about these issues, she could have acted sooner. Sun explained she is requesting time to find a suitable replacement tenant.

Councilmember Howe verified with Sun that she has owned the building since 1997 or 1998.

Councilmember Howe verified with Sun that she has not been at the property when it is open for customers since 2005.

Councilmember Hamilton inquired if Sun was aware of the liquor license problems with the Abyss in 2006 and Sun responded that she was not aware of any issues until last month when she received a letter.

Councilmember Howe asked Director Hom as to whether the property owner is noticed when there is an action against the property. Director Hom stated a notice was provided at the initiation of this revocation hearing.

Councilmember Howe verified with Deputy Chief Stivers that no notices have been given to the owner of this property, but a previous attempt was made to reach the property owner.

Councilmember Howe verified with Nielsen that ABC issues the license to the business owner and are under no obligation to notify the property owner when issues arise.

Anderson stated he received contact from Sunnyvale Public Safety staff about a year ago because they wanted to see if the property owner would be interested in meeting to discuss obtaining a different use. Anderson stated at the time they already had a tenant and could not move them out. Councilmember Howe verified with Anderson that he did discuss the City's request to meet with the owner, but the concern was there was already a tenant in place. Anderson stated it was his recollection that Sun declined to meet with the City at that time.

Director Hom explained to Mayor Spitaleri that staff met with Sun about two weeks ago and outlined her options should the Use Permit be revoked including what immediate uses would be allowed. Director Hom stated staff explained that a new tenant or the property owner would be eligible to apply for a new Use Permit. Mayor Spitaleri stated his concern is that the property owner will be impacted more than the lessee; however, it is the lessee who has caused the problems. Director Hom responded that staff is aware of the impact this will be on the property owner; however, staff is attempting to address the welfare of the general public including the other businesses in the area that have been impacted. Mayor Spitaleri stated he is concerned that the property owner was not contacted sooner and given a chance to remove the lessee.

Councilmember Whittum questioned if a nuisance itself is grounds for revocation of a Use Permit and Director Hom explained that the Abyss is in violation of state law in addition to the nuisance they have created to the community. A nuisance is a violation of the City's municipal code.

Councilmember Hamilton held a discussion with Sun as to the previous tenants at her property. Councilmember Hamilton verified Sun was not aware that problems also existed with previous business owners at her property.

Councilmember Chu verified with Nielsen that 50 percent of the sales at the Abyss have to be restaurant sales per the terms of their liquor license. Councilmember Chu verified with Nguyen that restaurant sales were 20 to 30 percent. Councilmember Chu stated it is difficult to encourage food sales when the business does not start operations until 10 p.m.

Public hearing opened at 9:12 p.m.

Richard Brock stated he is the managing partner of the adjacent business and expressed that the majority of the businesses in the area support the staff recommendation in this matter. Brock spoke of the numerous issues with the Abyss.

Public hearing closed at 9:16 p.m.

Mayor Spitaleri reopened the public hearing at 9:17 p.m.

Donna Lang, tenant of Richard Brock, described issues with the Abyss and explained how she has to clean the area near her business every morning due to the nightclub patrons that abuse the surrounding area and businesses. Lang stated she supports staff recommendation and

would like to see another use put in place.

Public hearing closed at 9:18 p.m.

Assistant City Attorney Moon responded to Pagkas brief and identified that she has not had any interactions with City Council regarding this matter. Assistant City Attorney Moon responded to other allegations from Pagkas regarding state regulatory powers over liquor license, and City Use Permit violations.

Councilmember Chu inquired if the permit was revoked what businesses could operate at this location. Planning Officer Ryan responded that a restaurant or retail business would be eligible to operate without a Use Permit. Should a new business wish to start up which offered alcohol or entertainment, they would be eligible to apply for a new Use Permit. Planning Officer Ryan explained that additional conditions of approval would be added to address some of the issues that prevailed with the prior Use Permit.

Councilmember Whittum verified with Assistant City Attorney Moon that Council can determine that the property is operating as a nuisance and revoke the Use Permit irrelevant of the appeal process that is going on with the ABC.

Pagkas gave closing arguments.

City Attorney Kahn explained to Council that this proceeding is a quasi-judicial hearing and his role is advisor to Council with separate counsel being assigned to the Community Development Department. Kahn explained that he has not had any contact with the department in preparation for this hearing and the only contact he has had with Council has been procedural. Kahn explained that he has kept an ethical wall between contact with Council, as has Assistant City Attorney Moon with the department. Kahn explained that this is not a formal court proceeding; therefore, the rules of evidence required in a court proceeding would not apply to this hearing. Council may consider any evidence that is reasonably related to the issues; however, Council does need to decide that the evidence is credible and how much weight to give it. The transcript from the ABC hearing is appropriate to review and determine the weight to give that information.

MOTION: Councilmember Howe moved and Councilmember Hamilton seconded to approve Alternative 1: Revoke Use Permit #5714 eliminating any uses authorized by that permit which include on-sale general liquor and entertainment at 146 S. Murphy Street based on the findings in Exhibit A.

Councilmember Howe explained that the revocation of the Use Permit is based on the history of the ABC license, continued noncompliance with the Use Permit, and continued public safety incidents as referenced in the staff report. The revocation of Use Permit #5714 would require the property owner to reapply for any use that is not permitted as of right at the subject property, in which the City would be in a better position to impose specific conditions of approval based on the past tract record at the site.

Councilmember Howe stated there has been a lot of testimony and this business is a trouble spot for the City and the use needs to be revoked.

Vice Mayor Moylan clarified that the motion should state Murphy Avenue not Murphy Street.



Councilmember Howe stated he will clarify his motion to correct that error.

Vice Mayor Moylan explained that a liquor license is granted to business owners and is a separate issue from a Use Permit which attaches to a property and to the property owner. Vice Mayor Moylan stated that Council's action with this motion addresses action against the property, not against the tenant. ABC is dealing with the tenant issue separately. Vice Mayor Moylan explained that if the use of a property creates a nuisance, as deemed so by Council, then the City code has been violated and following the City code is a condition of Use Permits. Since this is an action against the property, it would have been better if staff had made many more attempts to contact the property owner. However, issues like this require action on both sides. Vice Mayor Moylan stated the property owner identified that she was receiving the rent timely; however, receiving rent as a property owner is not sufficient, the property has to obey the law and not offer an unsafe environment for the citizens of the community. Vice Mayor Moylan stated it is not true that the property has to remain vacant because a new business can go through the Use Permit process again. Vice Mayor Moylan stated if a tenant violates the Use Permit you have on your property, it is the property owners responsibility to make sure that does not happen. Vice Mayor Moylan stated he will support the motion.

Councilmember Hamilton stated she was insulted by the comments made by Pagkas regarding the City's attorneys and public safety staff. Councilmember Hamilton stated this is an action she would prefer not to have to take, but it is an action Council is forced to take under these circumstances to protect citizens, the downtown, and the integrity of Sunnyvale.

Councilmember Whittum stated he would like to amend the motion and add to the findings in Attachment A that Council found the evidence presented along with the transcript to be credible; clear evidence that this establishment was a menace to the public peace, health and safety as described under the municipal code, and that there was a violation of City codes with adequate cause for revoking the Use Permit.

Councilmember Howe accepted the amendment.

Restated MOTION: Councilmember Howe moved and Councilmember Hamilton seconded to approve Alternative 1: Revoke Use Permit #5714 eliminating any uses authorized by that permit which include on-sale general liquor and entertainment at 146 S. Murphy Avenue based on the findings in Exhibit A

**with** findings to include: that Council found that the evidence presented along with the transcript to be credible; clear evidence that this establishment was a menace to the public peace, health and safety as described under the municipal code, and that there was a violation of City codes with adequate cause for revoking the Use Permit.

City Attorney Kahn stated that Exhibit A, Item 12 has a typographical error in that the item being revoked is the "Use Permit" which was left out of the text.

Councilmember Howe stated he will amend his motion with the correction to Item 12 in Exhibit A.

Restated MOTION: Councilmember Howe moved and Councilmember Hamilton seconded to approve Alternative 1: Revoke Use Permit #5714 eliminating any uses authorized by that permit which include on-sale general liquor and entertainment at 146 S. Murphy Avenue

based on the findings in Exhibit A

**with** findings to include: that Council found that the evidence presented along with the transcript to be credible; clear evidence that this establishment was a menace to the public peace, health and safety as described under the municipal code, and that there was a violation of City codes with adequate cause for revoking the Use Permit

AND correct Item 12 of Exhibit A to read as corrected in bold and italics as follows:

12. Pursuant to Sunnyvale Municipal Code section 19.98.130, for all above stated reasons, ***the Use Permit*** is hereby revoked.

Mayor Spitaleri stated he agrees that the problems with the Abyss have been a large issue in the downtown area. Mayor Spitaleri stated he finds it hard to believe that the City could not reach out to the property owner and let them know about the problem. Mayor Spitaleri requested that staff reach out to the property owner in the future. Mayor Spitaleri stated he has no doubt that this business was a nuisance to the City and surrounding businesses and he will support the motion.

Councilmember Chu stated he agrees with Mayor Spitaleri as the property owner has become a victim of this unfortunate circumstance and staff needs to do a better job at notifying the property owners regarding violations.

FORMAL AMENDMENT: Councilmember Chu moved to require property owners be notified when an ABC violation exists and encourage the state to do the same.

City Attorney Kahn stated that Councilmember Chu's amendment would not be appropriate with respect to this particular Use Permit.

Councilmember Chu stated he will withdraw his amendment and make it after the vote is taken on this item.

Councilmember Howe explained that he did question the property owner about how many times she visited her property and she responded that her visits were only every few years. Councilmember Howe stated as a property owner, inspections of businesses on your property should be made on a regular basis.

VOTE: 6-0 (Councilmember Swegles absent)

MOTION: Councilmember Chu moved to require property owners be notified when an ABC violation exists and encourage the state to do the same.

City Attorney Kahn explained that Councilmember Chu's motion would not be appropriate as the item on the agenda is about the revocation of the Use Permit for the Abyss. City Attorney Kahn explained to Councilmember Chu that it is appropriate to express this concern tonight, but that making it a motion is not appropriate for tonight's agenda.

Councilmember Hamilton requested that City Manager Luebbbers address Councilmember Chu's concern and City Manager Luebbbers responded that notification of property owners, as identified by Councilmember Chu, will be come part to the City's standard operating procedures.

**3. ORDINANCE 2009-0071 Determine Appropriate Review Standards for Alternative  
RTC 09-262 Energy Sources (Study Issue)**

Director of Community Development Hom presented the staff report.

Councilmember Whittum stated that limiting sites less than one acre to one turbine seemed like an excessive restriction. Director Hom responded that this is something that could be reviewed in the future, and that the staff recommendation was based on what the technology consultants recommended. Director Hom stated several reasons were taken into consideration such as aesthetics and the practical aspect of proper spacing of such devices so as to be relatively unobstructed in order to capture the wind energy.

Councilmember Whittum verified with Director Hom that staff is not currently aware how homeowner insurance policies would address the storage of biodiesel. Director Hom explained that the proposed zoning code does not prohibit the storage of biodiesel fuel on residential properties; rather the production of biodiesel fuel, due to potential hazards.

Councilmember Whittum verified with Director Hom that he is not aware of any fires occurring with the Sunnyvale residents making biodiesel fuel at their homes. Councilmember Whittum verified with Planning Officer Trudi Ryan that a five foot turbine placed upon a residential roof would also need to be five feet from the property line.

Councilmember Chu inquired whether there is any distinction between vertical and horizontal axis wind turbines, because horizontal turbines take up more space. Planning Officer Ryan responded that when the recent recommendations were put together, no distinction was made between the two styles. Staff does not have sufficient information at this point to suggest there should be a difference between the two styles.

Vice Mayor Moylan inquired as to the procedure for a citizen to install solar power at their residence with the capacity to have battery storage in their yard. Planning Officer Ryan responded that the building department would be the main advisor to the resident regarding the actual construction and whether PG&E had been notified; whereas, the planning department would be looking at the setbacks. Director Hom added that installation of solar power would also require some type of electrical or mechanical permits and would be subject to the City's building codes.

Vice Mayor Moylan verified with Director Hom that the City's current building codes are sufficient to handle this type of installation.

Public hearing opened at 10:11 p.m.

Jim Griffith stated his support that the guidelines should identify a preference for vertical axis wind turbines within an urban setting, because of the aesthetics and the fact that vertical axis will have less impact on the bird population.

Mei-Ling Stefan expressed her concerns over storage of biodiesel fuel. Stefan also stated concern over the setback requirements for wind turbines because cellular companies may request the same setback requirements instead of their current two to one setback ratio. Stefan expressed her desire that the City's approach toward energy be comprehensive.

Arthur Schwartz stated he agrees with the previous speaker's comments regarding vertical turbines and the fire hazards from formulating biodiesel fuel at residential locations.

Public hearing closed at 10:18 p.m.

Councilmember Whittum verified with Director Hom that Alternative 2B would require planning staff to consult with Public Safety to come up with a set of requirements to allow biodiesel. Director Hom stated that until the technology evolves further regarding regulating these types of facilities, staff feels it would be premature to prioritize studying the production of biodiesel; however, it is something that staff should monitor and report back to Council as it evolves.

Councilmember Whittum verified with Director Hom that staff has not received a high number of inquiries regarding the production of biodiesel at this point, especially for residential use. Director Hom stated that should staff receive a fair number of requests, staff would suggest Council further review of this item.

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve:

Alternative 1A: Adopt the proposed ordinance found in Attachment B to establish development standards and permitting requirements for small wind energy systems;

Alternative 2A: adopt the proposed ordinance (Attachment B) to prohibit biodiesel production in residential zones;

Alternative 3A: to use existing zoning and building/electrical codes to review proposed installations of fuel cells;

Alternative 4A: to use existing zoning and building/electrical codes to review proposed installations of geothermal heating/cooling systems;

Direct staff to monitor changes in alternative energy technology and return to Council to consider possible amendments to the City's regulations if significant changes suggest that modifications are desirable

**with** include a preference for vertical wind turbines, versus horizontal;  
increase distance for free standing wind turbines from one to one to two to one, meaning the set back requirement would need to be twice the height of the turbine.

Vice Mayor Moylan stated biodiesel production in the home is a bad idea due to the chemical nature of the process and the likely odds of a fire occurring.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Chu seconded to amend the motion: with reference to page 6 of Attachment B, paragraph A, section 19.56.070, to read as follows:

- (a) Number of Systems. For properties in or adjoining residential zoning with a lot size of one acre or less, no more than one wind energy system shall be permitted.

Councilmember Whittum explained that the intent of his amendment is to allow an industrial area or a potential commercial area more than one wind turbine on the building.

VOTE: 5-1 (Councilmember Howe dissented, Councilmember Swegles absent)

Restated MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve:

Alternative 1A: Adopt the proposed ordinance found in Attachment B to establish

development standards and permitting requirements for small wind energy systems;  
Alternative 2A: adopt the proposed ordinance (Attachment B) to prohibit biodiesel production in residential zones;

Alternative 3A: to use existing zoning and building/electrical codes to review proposed installations of fuel cells;

Alternative 4A: to use existing zoning and building/electrical codes to review proposed installations of geothermal heating/cooling systems;

Direct staff to monitor changes in alternative energy technology and return to Council to consider possible amendments to the City's regulations if significant changes suggest that modifications are desirable

**with**

- include a preference for vertical wind turbines, versus horizontal;
- increase distance for free standing wind turbines from one to one to two to one, meaning the set back requirement would need to be twice the height of the turbine,
- amend the motion: with reference to page 6 of Attachment B, paragraph A, section 19.56.070 – Number of Systems to read as follows: (a): Number of Systems. For properties in or adjoining residential zoning with a lot size of one acre or less, no more than one wind energy system shall be permitted.

VOTE: 6-0 (Councilmember Swegles absent)

#### **4. RTC 09-270 General Plan Consolidation**

Director of Community Development Hanson Hom presented the staff report.

Councilmember Whittum asked how the General Plan Consolidation process would interact with the Land Use and Transportation Element (LUTE) Update.

Director Hom explained there are three immediate community outreach meetings already scheduled in November throughout varying sections of Sunnyvale. He stated that those meetings would allow discussion of the LUTE process, introduce the Consolidated General Plan concept and allow an opportunity for the public's feedback.

Director Hom clarified the focus of the advisory committee is not to reexamine or update all of the General Plan sub-elements. He reported many of these sub-elements have recently been updated. The Land Use and Transportation will have some revisions; the update to the noise element will be incorporated, and likely the air quality element and climate change. There will be comments substantive to the various elements, but the committee's charge will be focused on the proposed concept for reorganized consolidation of the General Plan.

Public Hearing opened at 10:35 p.m.

Patrick Walz stated he believed the General Plan consolidation was a good idea with the added efficiencies and cost savings; having more study issues and fewer California Environmental Quality Act (CEQA) delays. Walz questioned which elements would be revised and expressed concern over how time-consuming the review process would be for the various City Boards and Commissions.

Public hearing closed at 10:37 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton seconded the motion to authorize the consolidation of the General Plan into a single document with assistance from an advisory committee consisting of representatives from boards/commissions and City Council.

Vice Mayor Moylan explained that the idea is not to redo all of the General Plan elements but to consolidate them. He stated that managing the consolidation and ensuring it is correctly funneling up into the community vision will be the primary task of the committee.

Councilmember Hamilton addressed concerns raised earlier about staff time, and stated the consolidation would eventually streamline the process and make the document more accessible to the public.

VOTE: 6-0 (Councilmember Swegles absent)

**5. RTC 09-260 Approve Qualification Criteria and Reprioritization of Underground Utility Projects – Study Issue**

Councilmember Hamilton stated she will recuse herself on the portion of the item containing the list of underground utility projects as she owns real property listed on one of the streets listed.

Director of Public Works Marvin Rose presented the staff report.

Public Hearing opened at 10:42 p.m.

No speakers.

Public hearing closed at 10:42 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Howe seconded the motion to approve Alternative 1: Approve the revised Utility Undergrounding (UUD) Rule 20A Project Qualification and Ranking Criteria.

VOTE: 6 - 0 (Councilmember Swegles absent)  
Motion carried.

Councilmember Hamilton recused herself, and left the dais and the room.

MOTION: Vice Mayor Moylan moved to approve Alternative 2 Approve the revised Utility Undergrounding Rule 20A Priority List.

Councilmember Chu seconded the motion with a minor change to correct the spelling of one of the streets. Vice Mayor Moylan accepted the amendment.

Vice Mayor Moylan stated this is a better priority list and he is glad the Council is recognizing it is not just an aesthetic issue, but a pedestrian safety issue and a fire issue. He stated that the sooner the subsidy can be used, the City should do it.

VOTE: 5 - 0 (Councilmember Hamilton recused, Councilmember Swegles absent)  
Motion carried.

**COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Mayor Spitaleri reported he attended a recent meeting as the City representative to the California League of Cities Employee Relations Committee. About fifty city managers and mayors got together to support and unanimously voted on a white paper to address future pension costs, how to contain them, ways of reducing costs to the cities and look at ways that the pension system can be reformed in order to reduce costs to cities. This issue will also be taken up with the Employee Relations Committee in Sacramento dealing with pension reform.

**NON-AGENDA ITEMS & COMMENTS**

**COUNCIL:** Councilmember Howe requested an item on the November 17 agenda recognizing the City's candidate forum moderator. He requested this as a discussion item.

Councilmember Howe requested an item on the next agenda, October 27, as part of Intergovernmental Government Relations Assignments to discuss appointments to the Bond Committee, as there is no alternate for January, and to potentially appoint other Councilmembers to the Bond Committee.

Councilmember Howe stated he would like to sponsor a study issue regarding school zones, traffic, walking, speed limit, use of cross-walks, use of jay-walking and impeding traffic, to do a study to potentially lower the speed limit. Councilmember Hamilton co-sponsored the study issue on school zones.

Councilmember Whittum stated he would like to propose a study issue revisiting red light or traffic cameras. Councilmember Hamilton co-sponsored the study issue to revisit red light or traffic cameras.

**STAFF:** None.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Joint Study Session Summary of October 6, 2009 - City Council and Planning Commission, Consolidation of the General Plan
- Draft Minutes of the Board of Library Trustees Meeting of October 5, 2009

**ADJOURNMENT**

Mayor Spitaleri adjourned the Council Meeting at 10:50 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date